

June 11, 2015

Rik Rasmussen
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Via Electronic Mail: rik.rasmussen@waterboards.ca.gov

Subject: **Stakeholder Comments on Statewide Nutrient Control Policy
Development Process for Wadeable Streams**

Dear Rik:

The undersigned organizations (collectively the “stakeholders”) offer our comments and suggestions on the ongoing stakeholder process for the State Water Board’s development of a statewide nutrient control program. As the leading members of the regulated community, many of the stakeholders have been actively participating in the nutrient policy development process since early 2014, and have been meeting with State Water Board staff on nutrient policy related issues since early 2013.

The stakeholders who participated in the June 2-3 Science Panel meeting were very encouraged by what they heard from you and the panel members, and also appreciated the opportunity to share their perspectives with the panel directly. The purpose of this letter is to outline the key issues of concern to the stakeholders and to suggest a path forward for this important effort. As you know, the stakeholders have raised concerns with the overall direction of the process and the approach being taken toward nutrient policy development and we felt it would be helpful to place these concerns on the record in the hope that we can resolve outstanding issues, memorialize what we understand to be those areas where there is consensus among the stakeholders and State Water Board staff, and move forward in a productive direction. Our suggestions are both procedural and substantive, as highlighted in greater detail below.

1. Process Issues

While the stakeholders appreciate the opportunity to engage with State Water Board staff and technical staff from the Southern California Coastal Water Research Project (SCCWRP), the stakeholder group meetings thus far have been somewhat sporadic with little advance notice and purely focused on issues determined by the SCCWRP contract scope and work plan. For the stakeholders to be effective, we must be involved in decisions regarding meeting schedules, process, agenda development and priority setting. Representatives and alternates of the various stakeholder sectors were designated to facilitate communication and involvement with the facilitator (Brock Bernstein) and the State Water Board staff, but their level of involvement in key decision-making regarding the stakeholder process has so far been minimal. Going forward, there should be more active and meaningful engagement with the stakeholder leads. We understand that the upcoming focus group meetings will focus on implementation and an

“options” document that will lay out the path for policy development, and we ask that stakeholders be afforded the opportunity to review that document and provide feedback as soon as possible.

Perhaps most importantly, it would be of tremendous help to establish firm ground rules and governance documents to guide the process. This is something that the stakeholders have raised with State Water Board staff and in the stakeholder process previously. CASA has provided State Water Board staff with draft governance principles, example charters that have worked in other nutrient and policy development contexts, and suggestions on ways to better incorporate governance principles into the nutrient policy development process. Thus far, however, documents to address these points have not been developed, and very little time has been devoted to these important issues at stakeholder meetings. If State Water Board staff and the stakeholder process facilitator will commit to adopting a charter or other governance document to define and guide the process, the stakeholders would be willing to prepare an initial draft for your review and, ultimately, approval by the full group.

Finally, to ensure broad participation, stakeholder meetings should be scheduled at regular intervals with significant advanced notice, perhaps every three months on a set schedule. Many stakeholder representatives are dealing with a myriad of other issues and need more than two weeks notice to attend stakeholder meetings, particularly those that would require travel to Southern California. We ask that you consider the need for adequate advance notice for meetings as you begin outreach to individual stakeholders.

2. Overarching Nutrient Policy Development Approach

Aside from the process issues, the stakeholders are concerned about the perception created by the written and technical work products developed to date that the overall direction of the nutrient policy development process is focused on objective setting over finding effective solutions for nutrient management. While we are encouraged by presentations that acknowledge the need to consider nutrient management, the documentation being developed and shared publicly outside of the stakeholder group does not clearly convey these messages. And, while we appreciate the scientific work that SCCWRP is performing related to the nutrient management effort, the process thus far has heavily emphasized the establishment of nutrient objectives and numeric limits to support the implementation of those objectives, as evidenced by the content of the draft technical work plan, the draft science plan, and the almost exclusive focus in meetings on the SCCWRP work currently underway. We feel it is critical at this point to memorialize the longstanding acknowledgment by State Water Board staff and the stakeholders that nutrient management presents a unique problem that does not lend itself to this type of solution. Without this, the perception will persist that the overall nutrient policy development process is trending in the direction of numeric objectives (or numeric translators/targets) which will be unattainable in many water bodies, and which will ultimately form a bright line defining the attainment (or impairment) of beneficial uses. The stakeholders are concerned that this bright line will be established prior to development of essential information and consideration of substantive policy issues related to implementation and in advance of an opportunity for State Water Board staff

and stakeholders to weigh in on the practical realities of implementation and the various policy alternatives.

In order to be effective, the State Water Board's nutrient policy effort must consider and incorporate the ability to manage to a range of outcomes in terms of stream condition, biological endpoints, and other factors. The information being developed by SCCWRP should be a key *input* into the overall policy development effort that will ultimately allow nutrient management and regulatory policy decisions to be made, not the *driver* of the overall process. As has been acknowledged by State Water Board staff and many others, nutrients pose a unique problem that requires a different approach than traditional "one-size-fits-all" numeric targets and biological endpoints for the whole State. CASA has advocated strongly for the watershed-specific approach to be recognized as a viable option and possibly preferred approach in the State Water Board's nutrient policy. In conjunction with, and in consideration of, the technical work being performed by SCCWRP, we request that the State Water Board develop information to support the evaluation of management strategies and avoid a situation where policy determinations regarding the attainment of beneficial uses are made during, or are limited by the scientific research phase of nutrient policy development. It is our understanding that the options document being developed for the focus group meetings this summer may address some of these concerns. We encourage the State Water Board to recognize that a watershed approach is needed to effectively address eutrophication issues in California's wadeable streams and should be emphasized and/or incentivized by the policy in the options document and other documents and statements associated with policy development.

We appreciate the acknowledgement at the May 15, 2015 SAG meeting and the June 2-3 Independent Science Panel meeting that the terminology and direction of both the science plan and process should better reflect the overall nutrient management approach, including the establishment of reasonable goals based on knowledge of the attainability of those values. The stakeholders agreed at those meetings that documents going forward should explicitly refer to "nutrient management" as distinguished from purely nutrient numeric endpoint "objective setting" and compliance at discharge points. There was a fair amount of discussion about the value of clarifying this perspective, and we would appreciate that this consensus be reflected in existing and future documents that are part of this effort, including but not limited to the as yet undeveloped charter (or equivalent), the options document and any future items related to implementation.

3. Outstanding Comments and Next Steps

Many stakeholders made specific suggestions for revisions to the technical work plan in July of 2014 that reflected an understanding of the importance of implementation and consideration of a watershed approach and holistic solutions to eutrophication in wadeable streams. While we understand that at this point the technical work plan may not be the best vehicle to recognize the need for a watershed-based approach, as the policy development process moves into discussions on implementation, the underlying theme of those comments should be reflected in future documents. Based on the presentation at the May 15, 2015 Stakeholder meeting and the June 2-3 Science Panel meeting, it is our understanding that SCCWRP and the

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State Water Board believe these issues will be better addressed in the options document that is being prepared for the focus group meetings this summer rather than the technical work plan. As a result, as mentioned previously, we request the opportunity to review and provide feedback on the options document ahead of the focus group meetings if at all possible. This will provide the State Water Board with the opportunity to show how these concerns have been addressed and facilitate productive focus group discussions.

In order to reach a shared understanding of where the nutrient policy development process is headed and reflect the stakeholders' concerns, we request that the following tasks be assigned a high priority and completed as soon as feasible:

- Adopt a charter document (or other document) setting forth the governance and decision making structure for the stakeholder process;
- Provide opportunities for stakeholder group input on the options document prior to focus group meetings to support the inclusion of the management approach;
- Establish a regular schedule for future meetings and notice.

In addition, while we look forward to engaging in the focus group process over the next few months, we also want to make sure that essential drivers of the larger process are considered before these meetings take place in order to guide those focused discussions.

Thank you for the opportunity to provide input on the nutrient control program development process. If you have any questions or require additional information, please contact Adam Link, CASA's Director of Government Affairs at (916) 446-0388 or alink@casaweb.org.

Sincerely,

*Almond Hullers and Processors Association
Bay Area Clean Water Agencies
California Association of Sanitation Agencies
California Cotton Ginners Association
California Cotton Growers Association
California Farm Bureau Federation
California Stormwater Quality Association
Central Valley Clean Water Agencies
Dairy Cares
Golden Ag Assistance
Grower-Shipper Association
Grower-Shipper Association of Santa
Barbara and San Luis Obispo Counties*

*Kern River Watershed Coalition Authority
Kings River Water Quality Coalition
KMI
Monterey County Farm Bureau
San Joaquin County and Delta Water Quality
Coalition
Southern California Alliance of POTWS
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western States Petroleum Association
(WSPA)
Westside San Joaquin River Watershed
Coalition*

cc: Brock Bernstein
Tom Howard
Vicky Whitney